IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEMOCRATIC NATIONAL COMMITTEE, *Plaintiff*, v. THE RUSSIAN FEDERATION, et al., *Defendants*.	Case No. 1:18-cv-3501-JGK-SDA Oral Argument Requested

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT DONALD J. TRUMP FOR PRESIDENT, INC.'S MOTION FOR RULE 11 SANCTIONS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

OTHER AUTHORITIES

INTRODUCTION

In the Democratic National Committee's publicity campaign after filing this lawsuit, its Chair expressed his "great respect for [former FBI] Director [Robert] Mueller," who had been appointed as Special Counsel nearly a year earlier to investigate the very theory underlying all of the DNC's claims against Defendant Donald J. Trump for President, Inc. ("the Campaign")—namely, that the Campaign conspired with Russia in that nation's efforts to interfere in the 2016 presidential election by stealing and disseminating DNC materials. *DNC Chair Tom Perez On Trump/Russia Lawsuit: "We Have To Deter This Conduct,"* Real Clear Politics (Apr. 22, 2018), http://bit.ly/2JdOhvV. The DNC Chair explained that the DNC filed this lawsuit because "I don't know when Director Mueller's investigation is going to end" relative to the applicable statutes of limitations, "so we need to file now to protect our rights." *Id.* The assumption, of course, was that the Special Counsel would substantiate the DNC's claims.

Suffice it to say, that assumption did not pan out. Quite the opposite: Special Counsel Mueller's historically expansive investigation definitively refuted the notion that the Campaign conspired or in any way coordinated with Russia. In an over-400-page Report, the Special Counsel not only explains that his investigation "did not establish" any such conspiracy or coordination, but debunks any such conclusion by walking through the vast body of evidence that his Office collected and establishing that none of this evidence showed that the Campaign formed any sort of agreement with Russia. In so doing, the Report makes clear that the DNC will never be able to prove the key allegations underlying *all* of its claims against the Campaign.

For this reason, the Special Counsel's Report should have brought an end to the DNC's lawsuit against the Campaign. The DNC, however, has refused to accept this reality. In fact, just hours after the Report's public release, the DNC filed its Omnibus Opposition to Defendants' Motions to Dismiss, in which it emphatically doubled down on its now demonstrably false insistence that the Cam-

paign joined in Russia's election-interference activities. And even after the Campaign highlighted for the DNC the ways in which the Special Counsel's findings render its claims untenable, the DNC refused to withdraw those claims or even to amend a single allegation in its 372-paragraph Second Amended Complaint. The DNC has thus made clear that it wants to proceed with a politically motivated sham case, tying up the resources of this Court and the Campaign—and inevitably burdening the President himself—all in a doomed effort to prove a falsehood.

Fortunately, there is a remedy for the DNC's insistence on litigating discredited theories. As the DNC's Chair noted in the very same interview when addressing the possibility that this litigation would be used to air "wild theories," "[t]he beauty of the civil justice system" is that "facts matter" and "there's this thing called Rule 11 where you get sanctioned for trying to do things like that." *Id.*

That is of course correct. And by maintaining its claims against the Campaign in the face of the Special Counsel's exhaustive factual findings, it is the DNC that is pressing "wild theories." That is particularly troublesome here because discovery in this case would necessarily burden core separation-of-powers and First Amendment principles, both of which require courts to limit discovery to situations where it is actually needed. *Cf. e.g.*, *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 382 (2004); *F.E.C. v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (Roberts, C.J.).

In short, since the DNC's frivolous legal theories have now been exposed as resting on frivolous factual fantasies, these are two independent reasons to terminate this sham political litigation before it does even more harm. The DNC and its counsel are violating their obligations under Rule 11, and should be sanctioned by having all of their claims dismissed with prejudice and being ordered to reimburse the Campaign for all fees and costs it incurs as a result of the DNC's disregard for the truth.

BACKGROUND

A. The DNC Brings Six Claims Against the Campaign, All Based on the Theory that the Campaign Agreed With Russia to Steal and Disseminate DNC Materials

The DNC's claims against the Campaign are all predicated on the notion that the Campaign "was a willing and active partner in Russia's efforts" to "hack[] into the DNC's computers" and "use[] the stolen information to improve [then-candidate Trump's] chances of winning the 2016 Presidential election." SAC ¶¶ 1–2 (ECF 216). Under this theory, the Campaign "solicited Russia's illegal assistance" and "formed an agreement [with Russia] to secure Trump's grip on the Presidency through illegal means"—namely, through Russia's "trespass[ing] onto the DNC's computer network," stealing information, and "disseminat[ing] the information at times when it would best suit the Trump Campaign." *Id.* ¶ 2–3. Through this supposed agreement, the DNC claims, the Campaign put itself "in league with a hostile foreign power to bolster its own chance to win the Presidency." *Id.* ¶ 34.

The DNC alleges that the Campaign joined this endeavor with Russia "by March 2016, or, at the very least, by June 2016." *Id.* ¶ 272. Those two supposed start dates are tied to two sets of interactions that form the pillars of the DNC's theory that the Campaign formed an agreement with Russia.

First, the DNC's allegations as to March 2016 center on interactions between Defendants George Papadopoulos (at the time a foreign-policy advisor to the Campaign) and Joseph Mifsud (a London-based professor who the DNC alleges was a "de facto agent of the Russian government"). *Id.* ¶¶ 52, 92–95. The DNC alleges that those two first met in March, and that after several such meetings, on April 26, "Mifsud told Papadopoulos that the Russians had 'thousands of emails' that could harm Hillary Clinton's presidential campaign." *Id.* ¶ 94(d). The DNC alleges that Papadopoulos "reported [this information] back to his superiors at the Trump Campaign," and insinuates that the Campaign at this point began working to coordinate with Russia. *Id.* ¶¶ 13, 96–100.

Second, the DNC's allegations as to June 2016 center on the June 9 meeting at Trump Tower between several Campaign officials and certain individuals with ties to the Russian government. The

DNC alleges that Defendants Aras and Emin Agalarov contacted Defendant Donald Trump, Jr. on June 3 regarding "some official documents and information that would incriminate Hillary and her dealings with Russia," and that those individuals then arranged a "meeting at which Russians would provide the Trump Campaign with damaging information about the Democratic nominee." *Id.* ¶¶ 133–35. In the DNC's telling, this meeting represented "Russians [a]gain [o]ffer[ing] [t]o [a]ssist Trump—[a]nd Trump Associates [a]ccept[ing] [t]he [o]ffer." *Id.* at 34, § H; *see also id.* ¶ 132 (alleging that through this meeting, "Defendants launched a scheme to disseminate information that was damaging to the Democratic party and the DNC").

All of the DNC's claims against the Campaign are predicated on this agreement that the Campaign supposedly formed with Russia in March or June 2016. The DNC's RICO claims are premised on the Campaign joining an enterprise with Russia and others to conduct "a cyber-espionage operation" against the DNC. *Id.* ¶ 306; *see also id.* ¶¶ 272, 282–83, 289–90. The DNC's Wiretap Act claim depends on the Campaign knowingly using stolen communications. *Id.* ¶ 312. The DNC's D.C. Uniform Trade Secrets Act claim requires it to establish that the Campaign misappropriated DNC trade secrets. *Id.* ¶ 339. The DNC's claim for conspiracy to commit trespass to chattels requires the Campaign to have joined a conspiracy to steal DNC materials. *Id.* ¶ 356. And the DNC's Virginia Computer Crimes Act claim depends on the Campaign aiding and abetting Russia's hacking. *Id.* ¶ 371. In short, the DNC's entire case against the Campaign depends upon the theory that the Campaign conspired or coordinated with Russia in that country's efforts to steal and publish DNC materials.

B. The Special Counsel Refutes the Notion that the Campaign Conspired or Coordinated With Russia

Almost one year before the DNC filed this lawsuit, the Special Counsel was appointed to investigate the theory underlying the DNC's entire case against the Campaign: whether the Campaign participated in any "conspiracy as defined in federal law" or whether there was any "agreement—tacit or express—between the Trump Campaign and the Russian government on election interfer-

ence." Special Counsel Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Vol. I at 11 (Mar. 2019), http://bit.ly/2KcljDE ("Mueller Report")[1] (citing Office of the Deputy Att'y Gen., Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017)). The Special Counsel spent nearly two years investigating these questions, deploying resources that go far beyond what would ever be available—let alone feasible—in civil discovery. The Special Counsels' Office included 19 attorneys, various support staff, and "approximately 40 FBI agents, intelligence analysts, forensic accounts, a paralegal, and professional staff assigned by the FBI." *Id.* at 13. Among other things, the Office interviewed approximately 500 witnesses, issued over 2,800 subpoenas, executed nearly 500 search-and-seizure warrants, and obtained more than 230 orders for communications records and almost 50 orders authorizing use of pen registers. *Id.*

The Special Counsel concluded his investigation in March 2019 and provided to the Attorney General an over-400-page Report exhaustively detailing the Office's findings. The Justice Department announced that the Attorney General would publicly release the Report within weeks, after making redactions to protect confidential information. Sarah N. Lynch, *Mueller Report Details to be Issued in 'Weeks, Not Months': Justice Department*, Reuters (Mar. 26, 2019), https://reut.rs/2K6mK05. On April 15, the Justice Department announced that the Report would be released on April 18, the same day as the deadline for the DNC's opposition to Defendants' motions to dismiss this lawsuit.

[1] Because the Report is too large to be filed through ECF, the Campaign will deliver a copy to the Court. The Campaign included a copy of the Report when serving its Notice of Motion on the DNC's counsel. And as noted above, the Report is publicly available on the Department of Justice's website.

Sarah N. Lynch, *Redacted Mueller Report to be Issued by U.S. Attorney General on Thursday,* Reuters (Apr. 15, 2019), https://reut.rs/2XjJhtO. The Report was indeed released the morning of April 18.

The Report sets out the Special Counsel's conclusion: Although Russia "worked to secure" President Trump's election and the Campaign "expected it would benefit electorally" from the release of information Russia had stolen, the Special Counsel's "investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities." Mueller Report, Vol. I at 1–2. In reaching this conclusion, the Special Counsel's Office explained that it exhaustively investigated all of the events underlying the DNC's allegations against the Campaign. At every turn, the Office's findings refute the DNC's inferences that the Campaign conspired or coordinated in Russia's election-interference efforts. In fact, the Special Counsel specifically disproved the pillars of the DNC's conspiracy theory against the Campaign, centering on Papadopoulos's interactions with Mifsud and the Trump Tower meeting.

First, the Report debunks the notion that the Campaign conspired or coordinated with Russia through Papadopoulos's interactions with Mifsud. There is no finding that Papadopoulos told anyone else at the Campaign about any "stolen materials," much less that he brokered an agreement with Russia. The Special Counsel reported that Papadopoulos "could not clearly recall having told anyone on the Campaign" about Mifsud's reference to emails, and that "the Campaign officials who interacted or corresponded with him … could not recall Papadopoulos's sharing the information that Russia had obtained 'dirt' on candidate Clinton in the form of emails or that Russia could assist the Campaign through the anonymous release of information about Clinton." *Id.* at 93. Nor did any other evidence substantiate the DNC's theory: "No documentary evidence, and nothing in the email accounts or other communications facilities reviewed by the Office, shows that Papadopoulos shared this information with the Campaign." *Id.* at 94. The Special Counsel also found that, although

Papadopoulos discussed "with Mifsud and two Russian nationals" the possibility of a meeting between the Campaign and the Russian government, "[t]hat meeting never came to pass." *Id.* at 81.

Second, the Report puts to rest the notion that, through the Trump Tower meeting, the Campaign became involved in Russia's effort to steal and disseminate the DNC's materials. As the Report explains, "[t]he meeting lasted approximately 20 minutes." *Id.* at 117. During that time, the individuals associated with the Campaign did not raise any topics for discussion, and the Russia-connected individuals raised just two topics: (1) alleged "funds derived from illegal activities in Russia [that] were provided to Hillary Clinton and other Democrats," and (2) "a critique of the origins of … a 2012 [U.S.] statute that imposed financial and travel sanctions on Russian officials and that resulted in a retaliatory ban on adoptions of Russian children." *Id.* at 110. The meeting ended shortly thereafter, and was regarded by both American and Russian participants as a "waste of time." *Id.* at 118, 120. Thus, under the Special Counsel's findings, the meeting had *nothing* to do with documents stolen from the DNC, let alone with the Campaign even learning of—much less joining—a plan for Russia to continue stealing and disseminating such documents.

These are hardly the only ways in which the Report refutes the DNC's efforts at conjuring up an agreement between the Campaign and Russia. For example, although the DNC claims the Campaign "water[ed] down" a provision of the Republican Party platform to appease Russia (SAC ¶ 153), the Special Counsel's "investigation did not establish that [the amendment efforts] were undertaken at the behest of candidate Trump or Russia" (Mueller Report, Vol I at 10). In fact, several Campaign officials believed the amendment did not even accurately reflect the Campaign's stance. *Id.* at 127. Likewise, although the DNC asserts that Defendant Paul Manafort shared with "an individual tied to Russian military intelligence" polling data that "could have helped Russia … determine how best to utilize information stolen from the DNC" (SAC ¶¶ 12, 91), the Special Counsel "did not identify evidence of a connection between Manafort's sharing polling data and Russia's interference in the

election," and "did not establish that Manafort otherwise coordinated with the Russian government on its election-interference efforts" (Mueller Report, Vol. I at 131). And although the DNC speculates that various individuals made misstatements after the election in an effort to "cover up their collusion" (SAC ¶ 5; *see also id.* ¶¶ 206–31), the Special Counsel drew no such connection—and his Report makes clear that there could be no such connection, because there can be no concealment of something that did not occur in the first place.

C. Despite the Special Counsel's Exhaustive Findings, the DNC Doubles Down on Its Claim that the Campaign Conspired or Coordinated With Russia.

Hours after the Mueller Report's public release, the DNC filed its Omnibus Opposition to Defendants' Motions to Dismiss. Despite by then being on full notice that the Special Counsel had refuted the allegations and inferences underlying all of its claims against the Campaign, the DNC stood by all of those claims. Indeed, it became even *more* adamant about its now demonstrably false insistence that "[t]he Trump Campaign, Trump's closest advisors, WikiLeaks, and Russia participated in a common scheme to hack into the DNC's computer system, steal its trade secrets and other private documents, and then strategically disseminate those materials to the public to improve Trump's chances of winning the election." MTD Opp. at 1–2 (ECF 241). Throughout the 136-page Opposition, the DNC repeatedly suggests the Campaign's involvement in Russia's election-interference efforts, falsely labeling the Campaign an "information thie[f]" who "aid[ed], abet[ted], or conspire[d] with" Russia. *Id.* at 4, 101; *see also id.* at 96 (claiming that the Campaign "agreed to a general plan to hack and steal"); *id.* at 99 ("Defendants worked with one another to coordinate the theft of materials from DNC computers before those materials were published.").

In fact, the DNC's Opposition goes even further than its SAC, expressly urging the Court to adopt inferences that the DNC by then had every reason to know the Special Counsel had disproven. Despite the Special Counsel's finding that there was no evidence of Papadopoulos even telling anyone else at the Campaign about Mifsud's reference to "'thousands of emails' that could harm Hillary

Clinton's presidential campaign," the DNC argues in its Opposition that Papadopoulos "met repeatedly with Mifsud to obtain damaging information regarding Clinton," "deliver[ed] information" about "stolen Democratic emails" "to his superiors at the Trump Campaign, and "was responsible for coordinating with Russian operatives before and during the April 2016 hacks on the DNC's computer systems." *Id.* at 19–20, 27, 36, 41. From all of this blatantly false information, the DNC urges the Court to draw the inference that "Russia was reporting on the progress of its cybercrimes to Papadopoulos, apprising him of stolen materials that could be helpful to the Trump Campaign, and giving him an opportunity to tell them whether the Campaign wanted more." *Id.* at 36.

The DNC's Opposition similarly disregards the Special Counsel's finding that the Trump Tower meeting in no way resulted in the Campaign becoming involved in Russia's election-interference efforts. Entirely ignoring the Special Counsel's detailed explanation of what transpired at the meeting, the DNC baldly speculates that the meeting participants "likely discussed data stolen from the DNC, and how that data could be of use to the Campaign," and that "the Trump Campaign repeatedly communicated with Russian agents (including the Russian agents at the Trump Tower meeting …) to obtain information about stolen DNC documents." *Id.* at 19, 21. The DNC thus draws from the meeting the "infer[ences] that: (a) Russia used the meeting to tell members of the Trump Campaign about the documents it had stolen from the DNC, including trade secrets; and (b) members of the Campaign blessed a plan in which Russia would continue stealing similar documents and disseminate the documents it already had to the public." *Id.* at 37.

While the DNC's Opposition acknowledged that "the Special Counsel's investigation is complete" (*id.* at 87), at no point does it even attempt to reconcile any of its assertions with the Special Counsel's comprehensive findings.

D. After Being Served With the Campaign's Rule 11 Motion, the DNC Still Refuses to Withdraw Its Claims Against the Campaign

On May 13, in accordance with Federal Rule of Civil Procedure 11(c)(2), the Campaign served the accompanying Notice of Motion for Rule 11 Sanctions, along with a nearly six-page cover letter, on the DNC. Ex. A (Notice of Motion and Aff. of Service); Ex. B (Cover Letter). That Notice of Motion sets forth the Campaign's position that, in light of the Special Counsel's findings, the DNC's maintenance of its claims against the Campaign violates Rule 11. The DNC responded on June 2, refusing to withdraw its claims against the Campaign or even to amend any of its now disproven allegations. Ex. C.

LEGAL STANDARD

Rule 11 provides that, when filing any "pleading, written motion, or other paper," or "later advocating" positions contained in such submissions, a party's counsel "certifies," among other things, that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the "factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3). When this certification is violated, Rule 11(c)(1) authorizes the Court to "impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." The standard for assessing a party's compliance with Rule 11 is "objective unreasonableness." *Storey v. Cello Holdings, L.L.C.*, 347 F.3d 370, 387 (2d Cir. 2003) (citation omitted). Under this standard, sanctions are warranted where a party makes factual contentions that are "utterly lacking in support." *Id.* at 388 (citation omitted).

For obvious reasons, the duty imposed by Rule 11 does not cease once a party files a particular pleading or motion. Rather, the duty is a continuing one: "a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings

and motions after learning that they cease to have any merit." *O'Brien v. Alexander*, 101 F.3d 1479, 1489 (2d Cir. 1996) (quoting Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment). The Rule thus "impose[s] a continuing obligation to correct or withdraw previously filed briefs or pleadings." *Galin v. Hamada*, 753 F. App'x 3, 8 (2d Cir. 2018).

In light of this continuing duty, courts have routinely recognized that once a party learns that its "allegations on the central (and dispositive) issue in the case were 'utterly lacking in support,'" it is obligated to "withdraw the Complaint" containing those allegations. *Galin v. Hamada*, 283 F.Supp.3d 189, 203 (S.D.N.Y. 2017) (quoting *StreetEasy, Inc. v. Chertok*, 752 F.3d 298, 307 (2d Cir. 2014)), *aff'd*, 753 F. App'x 3 (2d Cir. 2018); *see also, e.g.*, *Calloway v. Marvel Entm't Grp., a Div. of Cadence Indus. Corp.*, 854 F.2d 1452, 1472 (2d Cir. 1988) (sanctions are appropriate where an attorney or party "decline[s] to withdraw [a claim] upon an express request by his or her adversary after learning that it was groundless"), *rev'd in part on other grounds sub nom. Pavelic & LeFlore v. Marvel Entm't Grp.*, 493 U.S. 120 (1989); *Catcove Corp. v. Patrick Heaney*, 685 F.Supp.2d 328, 335 (E.D.N.Y. 2010) ("[A]ttorneys 'have a continuing obligation to monitor the strength of their clients' claims and discontinue representing clients who pursue claims that—although not obviously frivolous at the outset—are entirely unsupported or refuted by the evidence.'" (citation omitted)); *Gambello v. Time Warner Comm'ns, Inc.*, 186 F.Supp.2d 209, 229 (E.D.N.Y. 2002) (holding that sanctions were warranted when the plaintiff "refused to withdraw the claim" and "made arguments … [that] are completely contradicted by his sworn deposition testimony").

Nor can a party sidestep its Rule 11 obligations by simply making allegations "on information and belief," in hopes that evidence substantiating those allegations will eventually turn up. Although Rule 11(b)(3) authorizes parties to make allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery," "this allowance cannot be understood to give parties free reign to fire shots into the proverbial dark." *Bletas v. Deluca*, No. 11-cv-1777, 2011

WL 13130879, at *10 (S.D.N.Y. Nov. 15, 2011). " [A] reasonable inquiry must still support the likelihood of the inference drawn." *Id.* As the Advisory Committee's Notes to Rule 11 explain, "[t]olerance of factual contentions … made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances." Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment. "[I]f evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule *not* to persist with that contention." *Id.* (emphasis added).

ARGUMENT

I. The DNC Is Violating Rule 11 By Maintaining Its Claims Against the Campaign.

The DNC's maintenance of its claims against the Campaign is irreconcilable with its continuing obligations under Rule 11. All of those claims depend upon the notion that the Campaign was a "willing and active partner in Russia's efforts" to interfere in the 2016 election (SAC ¶ 2) and "participated in a common scheme" with Russia "to hack into the DNC's computer system, steal its trade secrets and other private documents, and then strategically disseminate those materials to the public to improve Trump's chances of winning the election" (MTD Opp. at 1–2). But the Special Counsel's exhaustive findings affirmatively disprove the key factual contentions underlying these claims, and in so doing refute the notion that the Campaign conspired or otherwise coordinated with Russia. In other words, the Special Counsel's investigation established that the DNC is unable to prove any of its causes of action against the Campaign. The DNC's claims against the Campaign are thus not merely "utterly lacking in support" (*Storey*, 347 F.3d at 388)—it is now clear that those claims are contrary to fact and that there is no scenario in which they could ever *find* support.

The decisions in the *Galin v. Hamada* litigation are instructive. There, the plaintiff's action to recover proceeds from the sale of a painting required him to overcome the defendant's affirmative defense by showing that an intermediate purchaser was *not* a "buyer in ordinary course of business."

283 F.Supp.3d at 195 (citation omitted). Even though the plaintiff's initial filing of his complaint was not sanctionable because "it could not be said—in the first instance—that application of the [affirmative defense] was 'patently clear,'" that conclusion did "not end the inquiry," in light of the plaintiff's continuing obligation under Rule 11. *Id.* at 202. The Court went on to explain that "discovery yielded no admissible evidence whatsoever to support [the plaintiff's] assertion that there were red flags surrounding the transfer of the painting" to the intermediate purchaser, and "[i]n fact … yielded quite the opposite: myriad evidence *supporting*" the defendants' position that the intermediate purchaser *was* a good-faith buyer in the ordinary course of business. *Id.* This is where the problem arose: Even after "the absence of factual support for [the plaintiff's] position" became clear, he "and his counsel continued to represent to the Court," including "in his opposition to [the defendant's] motion for summary judgment, that a legal and factual basis existed to support his Complaint." *Id.* at 203.

The Court held that, by continuing to press his claim even after the factual basis for that claim had been definitively refuted, the plaintiff had violated Rule 11. "[O]nce discovery closed, [the plaintiff] and his counsel had an obligation under Rule 11 to withdraw the Complaint because they knew—by that point if not earlier—that their allegations on the central (and dispositive issue) in the case were 'utterly lacking in support.'" *Id.* "Their decision not to do so—despite [the defendant's] explicit requests—took their actions outside the ambit of 'zealous advocacy' and into the realm of Rule 11 sanctions." *Id.* (collecting cases). Accordingly, in addition to entering summary judgment for the defendant, the Court sanctioned the plaintiff and his counsel by requiring them, "jointly and severally, to reimburse [the defendant] for his reasonable attorney's fees and other expenses associated with briefing the motion for summary judgment and the Rule 11 motion." *Id.* at 204. And the Second Circuit affirmed, holding that "[t]he district court correctly concluded that the complaint's assertion that [the intermediate purchaser] was not a good faith purchaser was not borne out by dis-

covery and appellants' opposition to summary judgment violated Rule 11 by reaffirming the allegations in the complaint while making additional baseless legal and factual representations." 753 F. App'x at 8.

The DNC's conduct here is materially indistinguishable from the sanctionable conduct in *Galin*. Just as in *Galin*, an investigation into the key allegations at the heart of the DNC's claims—that the Campaign conspired with Russian agents to influence the 2016 election—has revealed those allegations to be "utterly lacking in support." *Galin*, 283 F.Supp.3d at 203 (citation omitted). Just as discovery in *Galin* yielded "myriad evidence" undercutting the plaintiff's position (*id.*), the Special Counsel's Report marshals an overwhelming body of evidence that definitively refutes the DNC's insistence that the Campaign formed any sort of agreement to participate in Russia's election-interference activities. And just as the plaintiff in *Galin* continued to assert his by-then disproven claims in opposing the defendant's motion for summary judgment, the DNC has doubled down on its thoroughly discredited conspiracy theory in opposing the dismissal of its claims against the Campaign.

In fact, the basis for imposing sanctions is, if anything, stronger here than in *Galin*. In that case, the discovery period spanned just under five months, and was "limited" strictly "to the circumstances surrounding the transfer [of the painting] to" the intermediate purchaser. 283 F.Supp.3d at 193 (alteration in original). Here, by contrast, the Special Counsel's fact-findings are the result of a nearly two-year investigation that went far beyond anything that would be available to the DNC through discovery. Any discovery the DNC could ever hope to take would involve only a subset of the massive evidentiary record available to the Special Counsel's Office, and some small fraction of the nearly 500 individuals from whom the Office obtained sworn testimony under penalty of perjury or subject to potential prosecution under the federal false-statements statute. Mueller Report, Vol. I at 191–92. The DNC would need to show not merely that the same evidence available to the Special Counsel establishes what the Special Counsel found that the evidence "did *not* establish" (*id.* at 1–2

(emphasis added)), but that this same evidence affirmatively *disproves* the Special Counsel's key factual findings grounded in that massive evidentiary record. And the DNC would be doing all of this under the constraints of civil-discovery rules far stricter than any limit on the Special Counsel's sweeping investigation, which was backed by the vast financial and manpower resources of the Department of Justice and the FBI. This is thus not a case where the DNC has simply tried but failed to substantiate claims that it had some good-faith basis for asserting in the first place. Rather, the Special Counsel has confirmed the impossibility of the DNC *ever* being able to substantiate its claims against the Campaign, no matter what discovery it could conceivably obtain.

Simply put, the Special Counsel's Report completely discredits the DNC's efforts to infer an agreement between the Campaign and Russia based upon the March 2016 Papadopoulos–Mifsud interactions and the June 2016 Trump Tower meeting. As a result, the DNC cannot even allege when the supposed conspiracy came into existence. *See, e.g.*, *Mayor & City Council of Baltimore, Md. v. Citigroup, Inc.*, 709 F.3d 129, 136 (2d Cir. 2013) (plaintiff must "allege enough facts to support the inference that a conspiracy actually existed"); *see also Boyle v. United States*, 556 U.S. 938, 944, 946 (2009) (RICO requires plausible allegations that "a group of persons associated together" with "longevity sufficient … to pursue the enterprise's purpose"). And the DNC has no other basis for plausibly alleging that the Campaign entered into this conspiracy, particularly given the Special Counsel's conclusion that the voluminous body of evidence he amassed "did not establish" any such conspiracy or coordination. Mueller Report, Vol. I at 1–2. The Special Counsel's Report has gutted the DNC's claims against the Campaign, putting the DNC in violation of Rule 11 every day it refuses to acknowledge that reality and drop those claims.

II. Sanctions Are Necessary to Remedy the DNC's Violation of Rule 11 and Deter Future Violations.

Once a court finds that Rule 11 has been violated, it is authorized to impose sanctions "suffic[ient] to deter repetition of the conduct or comparable conduct by others similarly situated." Fed.

R. Civ. P. 11(c)(4). Such sanctions "may include nonmonetary directives," including dismissal of the complaint outright. *Id.*; *see also Safe-Strap Co. v. Koala Corp.*, 270 F.Supp.2d 407, 418 n.8 (S.D.N.Y. 2003) (explaining that Rule 11 permits a sanction of dismissal "for serious misconduct when lesser sanctions would be ineffective or are unavailable" (citation omitted)); *Murray v. Dominick Corp. of Can., Ltd.*, 117 F.R.D. 512, 516 (S.D.N.Y. 1987) (holding that "Rule 11 provides … grounds for the sanction of dismissal of the complaint").

The Court is likewise authorized to enter "an order directing payment to the movant of part or all of the reasonable attorneys' fees and other expenses directly resulting from the violation." Fed. R. Civ. P. 11(c)(4). Such an order can encompass the fees and costs a party incurs for filing the Rule 11 motion, as well as the fees and costs of litigation that "the parties would have avoided …, preserving their own resources (not to mention the Court's)" had the plaintiff "withdrawn his claims … when it was 'patently clear' that there was no evidence to support them and [when] he knew [the defendant] intended to seek Rule 11 sanctions." *Galin*, 283 F.Supp.3d at 204.

Both non-monetary and monetary sanctions are necessary and appropriate here. First, the Court should dismiss all of the DNC's claims against the Campaign with prejudice, as this is the only way to end the DNC's violation of its Rule 11 obligations. Second, the Court should require the DNC to reimburse the attorneys' fees and costs the Campaign has incurred in connection with this Motion, as well as all other fees and costs that the Campaign is forced to incur going forward to defend itself against the DNC's untenable claims. *Cf. id.*

CONCLUSION

For all of these reasons, the Campaign asks the Court to impose Rule 11 sanctions on the DNC.

Dated: June 4, 2019

Respectfully submitted,

/s/ Michael A. Carvin

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CERTIFICATE OF COMPLIANCE

I, Michael A. Carvin, certify that this brief complies with Rule 2(D) of the Individual Practices of Judge John G. Koeltl because it contains 5,511 words and complies with this Court's formatting rules.

Dated: June 4, 2019

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CERTIFICATE OF SERVICE

I, Michael A. Carvin, certify that on June 4, 2019, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all registered parties.

Dated: June 4, 2019

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